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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/706,431	11/03/2000	Jay S. Walker	97-169X	7036

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EXAMINER

BROCKETTI, JULIE K

ART UNIT	PAPER NUMBER
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3713

DATE MAILED: 07/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/706,431

Applicant(s)

WALKER ET AL.

Examiner

Julie K Brockett

Art Unit

3713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 June 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 38,39,43,44 and 47-59 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 47 and 55-58 is/are allowed.
- 6) ☒ Claim(s) 38,39,43,44,48-50,52-54 and 59 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 11, 2002 has been entered.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 49-50 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 49 states "displaying the first subject game element at a location..." and "displaying the second subject game element at the location..." The claims are written such that the first and second subject game elements are in the same location. This cannot be the case unless the first subject game element has been placed elsewhere. Consequently, the fact that the first subject game element is moved to a second location needs to be included in the claim language.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 38, 39, 43 and 44 are rejected under 35 U.S.C. 102(e) as being anticipated by Falciglia, U.S. Patent No. 5,971,849. Falciglia discloses a computer-based system and method for playing a poker-like game. A computing device is directed to conduct a game of chance. A subject game element is generated having a first class, (Fig. 7, item 100). The subject game element is displayed thereby displaying an indicia of the first class. An indicia (Fig. 7 item 104) is also displayed representing the forthcoming expiration of

the first class corresponding to the subject game element. The step of displaying an indicia representing the forthcoming expiration of the first class includes a countdown display. For example, the subject game element is a player's turn, the class is the turn number, and the countdown timer indicates the time left in a player's turn. Falciglia further discloses an apparatus with a storage device, a processor in communication with the storage device. The storage device storing a program for controlling the processor and the processor is operative with the program for performing the aforementioned method (Fig. 1). It is inherent to the computer system of Falciglia that there is a medium encoded with a program for implementing the abovementioned method and that the program directs the computer to perform the method.

Claims 52-54 are rejected under 35 U.S.C. 102(e) as being anticipated by Adams, U.S. Patent No. 6,120,031. Adams discloses a draw poker game. A game subject element, i.e. card, is generated having a first class, i.e. suit or number. The subject game element is displayed at a first location, thereby displaying an indicia of the first class. A placement signal is received from a player that indicates a second location. The subject game element is displayed at the second location. A signal is received via a lock button, i.e. reserve wild card button; the signal is effective to prevent the subject game element or the first class from expiring or changing. For example, a person selects the reserve wild card button and the wild card is moved from the main poker hand to the

reserved location thereby locking in the wild card for use later; consequently, the wild card does not expire or change (See Adams, Fig. 2 col. 3 lines 15-25).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 59 is rejected under 35 U.S.C. 103(a) as being unpatentable over Adams, U.S. Patent No. 6,120,031. Adams discloses a draw poker game. A game subject element, i.e. card, is generated having a first class, i.e. suit or number. The subject game element is displayed at a first location, thereby displaying an indicia of the first class. A placement signal is received from a player that indicates a second location. The subject game element is displayed at the second location. It is obvious that the subject game element is erased in response to expiration of a period of time. When no longer in the reserved location it is obvious to erase the game element so that players are aware that it is no longer available for use. For example, a person selects the reserve wild card button and the wild card is moved from the main poker hand to the reserved location thereby locking in the wild card for use later; consequently, the wild card does not expire or change until a period of time elapses such as a

certain number of games, at which time it is unavailable for use (See Adams, col. 4 lines 3-9).

### ***Allowable Subject Matter***

Claims 47, 51 and 55-58 are allowed over the prior art of record.

Claims 48-50 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

The following is a statement of reasons for the indication of allowable subject matter: the prior art of record lacks in disclosing moving a subject game element from a first location to a second location while displaying an indicia representing the forthcoming expiration of the first class or the subject game element. Nor does the prior art teach of assigning a second class to a subject game element in response to the expiration of a period of time.

### ***Response to Amendment***

It is noted that claims 1, 36-37, 40-42 and 45-46 have been cancelled. New claims 47-59 have been added.

### ***Response to Arguments***

Applicant's arguments with respect to claims 38, 39, 43, 44 and 47-59 have been considered but are moot in view of the new ground(s) of rejection.

### ***Citation of Relevant Prior Art***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

1. Kadlic, U.S. Patent No. 5,816,915.

--Kadlic discloses a poker game in which a player can select one of four possible hands to play.

2. Andrews, U.S. Patent No. 5,908,353.

--Andrews discloses a draw poker game in which a player can select certain cards to hold.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julie K Brockett whose telephone number is 703-308-7306. The examiner can normally be reached on M-F 7:00-4:30.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Valencia Martin-Wallace can be reached on 703-308-4119. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.



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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5648.

  
Julie Brockett  
July 22, 2002

  
MICHAEL O'NEILL  
PRIMARY EXAMINER